Filed 3/13/09 Estate of Pitts CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Estate of AGNES PITTS, Deceased.	B195805
JAMES ST. JULIAN, Petitioner and Appellant, v. JEWISH FAMILY SERVICE OF LOS ANGELES, Objector and Respondent.	(Los Angeles County Super. Ct. No. BP 069229)

APPEAL from an order of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Commissioner. Affirmed.

Law Office of Kayretha Hale Willis and Kayretha Hale Willis for Petitioner and Appellant.

Law Offices of Stuart D. Zimring, Stuart D. Zimring and Lewis Schlesinger for Objector and Respondent.

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Appellant James St. Julian filed a petition to set aside the order appointing William Pitts as personal representative of the estate of Agnes Pitts. Respondent Jewish Family Service of Los Angeles (JFS), administrator with will annexed of the estate of Agnes Pitts, opposed the petition. The trial court denied the petition on October 17, 2006. Respondent gave notice of the order denying the petition and on December 15, 2006, appellant filed a notice of appeal that states that the appeal is from the order denying the petition to set aside the order appointing William Pitts as personal representative.

On our own motion, we notified the parties prior to oral argument that we would consider the question whether this appeal is frivolous; we invited appellant to file a supplemental brief setting forth reasons why the appeal is not frivolous. We conclude that the appeal is frivolous and impose sanctions of $5,000 jointly and severally on appellant personally and on appellant's counsel.

BACKGROUND

The instant case is yet another attempt by appellant to set aside the testamentary dispositions made by his sister, Agnes Pitts, and her husband, William Pitts. Appellant, JFS and the Pitts' estate were the subject of a previous nonpublished opinion by us in *Estate of Pitts*, B195804, filed June 30, 2008 (*Pitts I*). Among other substantial flaws in this case, which we set forth below, the fact is that this *renewed* effort by appellant to change testamentary dispositions comes far too late. Agnes[1] died in April 2000; William, who was the executor of Agnes's estate, passed away in December 2001; and the final distribution was approved by the court in August 2005.

Pitts I revolved around an order entered on September 26, 2002, wherein the court found, upon JFS's petition, that at the time of William's death the effective testamentary instrument was the William Pitts 2001 Revocable Inter Vivos Trust with assets, in round numbers, of $818,000. The controversy in *Pitts I* centered on two

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[1] We refer to the Pitts by their first names for purposes of clarity and mean no disrespect.

petitions by appellant to show that the effective testamentary instrument was a trust created in 1997. Appellant abandoned the first petition before it ever came to a hearing. The second petition, filed in January 2006, was barred by the applicable statute of limitations and we so found in *Pitts I*. Our opinion affirmed the order of the trial court, entered on November 15, 2006, that denied the second petition. We rejected appellant's contention that he did not receive notice of the order of September 26, 2002, because uncontested facts showed that this claim was without merit. As we found in *Pitts I*, appellant received notice of the proceedings that lead to the order of September 26, 2002, not once but twice, i.e., on February 12, 2002, and July 22, 2002.

The statute of limitations that barred appellant's second petition in *Pitts I*, and that also bars the petition in the case before us, is Probate Code section 16061.8: "No person upon whom the notification by the trustee is served pursuant to this chapter may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to him or her during that 120-day period, whichever is later."

The final set of background facts that is relevant is that following William's death in December 2001, Doris Mason was appointed special administrator in September 2002. Mason was removed from this post in 2004 and JFS was appointed administrator with will annexed in June 2004. Appellant was party to these proceedings and contested Mason's and JFS's appointment. When Mason was removed and then surcharged, a judgment of $2,500 was also entered against appellant; this sum represented unpaid rent owed the estate of William Pitts.

Since William died seven years ago, on its face appellant's petition implausibly seeks the removal of a personal representative who is long dead.

APPELLANT'S CONTENTIONS IN THIS APPEAL

In this appeal, appellant, recognizing the implausibility of the relief he seeks, contends that the orders of September 26, 2002, and November 15, 2006, should be set

aside. Appellant admits that the appeal that is now before us is from the order of October 17, 2006, that denied the petition to set aside the order appointing William Pitts as personal representative of the estate of Agnes Pitts. Appellant contends that we should construe his notice of appeal liberally, i.e., that we should in this appeal address the orders of September 26, 2002, and November 15, 2006. Appellant contends that the orders of September 26, 2002, and November 15, 2006, "are properly before the Court." (Underlining omitted.)

For the reasons set forth below, we decline the invitation to once again review the orders of September 26, 2002, and November 15, 2006.

DISCUSSION

It is clear that appellant feels strongly that he has been aggrieved and that the passage of time has not weakened that conviction. While one can sympathize, on a human level, with such a feeling, it is nevertheless true that disappointed expectations, no matter how deeply felt, are not a license to engage in repeated and blatantly meritless litigation. In this case, JFS, not to speak of the judicial system, has had to bear the costs of litigation, including this appeal, which is bereft of even a colorable appearance of legitimacy.

There is no aspect of this case that has a semblance of merit. To begin with, the petition to set aside the order appointing William Pitts as personal representative of the estate of Agnes Pitts is completely pointless. William Pitts is long dead and JFS has been the personal representative since 2004. But a review of the petition discloses that it has nothing to do with William Pitts as personal representative of the estate of Agnes Pitts. This petition is simply another statement by appellant of grievances arising from the disposition of the Pitts' estate. Thus, not only is the object of the petition without a rational basis, the petition itself is another attempt to vindicate the claim that the trust of 2001 should be set aside for the trust of 1997.

The notion that in this appeal it should be possible to review the orders of September 26, 2002, and November 15, 2006, is untenable.

It is manifest that a notice of appeal filed on December 15, 2006, cannot empower a court to review an order made in September 2002.

As far as the order of November 15, 2006, is concerned, that order denied the petition wherein appellant claimed that the 2001 trust was invalid. It is evident that the order rejecting the contention that the 2001 trust was invalid has no connection with the order denying the petition to remove William as personal representative. Thus, this is not a situation when a notice of appeal should be construed liberally. No amount of "construction," liberal or otherwise, can enable an appellate court to review an appeal from one order (removal of William as personal representative) the merits of another order (validity of the 2001 trust) that has nothing to do with the order denying the petition to remove William as personal representative.

Pitts I affirmed the order of November 15, 2006, and also found that the order of September 26, 2002, was valid in that appellant had received more than adequate notice of the proceedings that led to that order. Appellant's brief, which for the most part is a repetition of arguments rejected in *Pitts I*, simply ignores the opinion and decision in *Pitts I*. This is not only substantively untenable; it shows a lack of respect for this court.

Finally, appellant's petition is barred by the statute of limitations.

In sum, there are four reasons why this appeal is completely devoid of merit.

First. The petition that is on appeal is frivolous as it seeks to set aside the appointment of a person as personal representative who has been dead for seven years.

Second. The issues that are actually raised in this appeal, i.e., the correctness of the orders of September 26, 2002, and November 15, 2006, cannot be raised in the appeal from the order denying the petition to remove William as personal representative.

Third. *Pitts I* disposes of the issues raised in this appeal.

Fourth. The petition to remove William as personal representative is barred by the statute of limitations.

Any one of these four reasons, taken alone, is fatal to this appeal.

"An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts. Thus, an appeal should be held to be frivolous only when it is prosecuted for an improper motive -- to harass the respondent or delay the effect of an adverse judgment -- or when it indisputably has no merit -- when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

The appeal before us "indisputably has no merit." There are several reasons for this, as we have shown. Given those reasons, any reasonable attorney would agree that under these circumstances this appeal is totally and completely without merit.[2]

In response to our notice that we are considering the imposition of sanctions for taking a frivolous appeal (Cal. Rules of Court, rule 8.276(a)), respondent has submitted a declaration that addresses the attorney fees and costs incurred in responding to this appeal. The sanctions that we impose are less than half of the attorney fees and costs incurred by respondent. Appellant has failed to submit anything in response to our notice and invitation to state why the appeal is not frivolous.

DISPOSITION

The judgment is affirmed. Appellant personally and his counsel are jointly and severally ordered to pay respondent $5,000 as sanctions for taking and prosecuting a frivolous appeal. Pursuant to Business and Professions Code section 6086.7, subdivision (a)(3), the clerk is directed to notify the State Bar of California of the sanctions imposed by this opinion and order. This opinion shall serve as notice to

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[2] Appellant requests that we augment the record with documents reflecting proceedings that we refer to in this opinion and in *Pitts I*. We grant that request as these documents confirm that appellant, represented by his current counsel, has been litigating the same issues since at least 2002.

counsel that the matter of the sanctions imposed has been referred to the State Bar. (Bus. & Prof. Code, § 6086.7, subd. (b).)

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FLIER, Acting P. J.

We concur:

BIGELOW, J.

O'NEILL, J.*

* Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.